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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
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**Ex-Ante Regulation and Competition in Digital Markets – Note by Mexico (IFT)**

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This document reproduces a written contribution from Mexico (IFT) submitted for Item 2 of the 136th OECD Competition Committee meeting on 1-3 December 2021.

More documents related to this discussion can be found at  
<https://www.oecd.org/daf/competition/ex-ante-regulation-and-competition-in-digital-markets.htm>

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## *Mexico (IFT)*

### 1. Introduction

1. This document aims to share the state of the formulation and discussion of ex ante regulation on digital markets in Mexico. It provides a brief background of the institutional framework in which the IFT develops its activities within the digital sector. Additionally, it describes the nature of the debate over this kind of regulation. Finally, it describes three recent initiatives to reform or enact new laws regarding this matter and the actions carried out by the IFT.

### 2. The institutional framework of the IFT

2. The IFT is the autonomous regulator and competition authority of the telecommunications and broadcasting (T&B) sectors in Mexico. Other sectors of the economy are supervised by the Federal Economic Competition Commission. In cases where it is unclear which authority has the legal attributions for resolving, both appear before the judiciary to obtain a decision on who is responsible for ruling the matter.

3. The digital economy has been in a gray area ever since the creation of both institutions in 2013. The legislative proposals to regulate ex ante the digital platforms described in this contribution were analyzed by the IFT because all of them proposed to reform the Federal Telecommunications and Broadcasting Law (LFTR, by its acronym in Spanish) and, thus placed on the IFT the main responsibility for implementing their provisions.

4. The Federal Economic Competition Law (LFCE, by its acronym in Spanish) grants the competition authority powers to issue non-binding opinions on law initiatives from the executive or legislative powers regarding economic competition aspects.

### 3. The debate over the ex ante regulation of digital platforms in Mexico

5. The debate over regulation of digital platforms has only recently appeared in the Mexican public arena. A reform to the income and value-added tax (VAT) laws published on December 2019, compelled digital services of audio and audiovisual content, gambling, gaming, intermediation, dating and remote education; to register, upload and report to the inland revenue service the VAT and income tax, if applicable, starting on June 2020. A subsequent reform to these laws published on December 2020 established the obligation of telecommunications services concessionaires to block their clients' access to digital platforms that do not comply with their fiscal obligations, at request from the inland revenue service.

6. Despite recent developments, the debate lingers on the discussions held within the IFT regarding the nature of certain digital services and their regulation, especially those perceived to compete most closely with traditional T&B services. Nonetheless, to this day, there has been no attempt to declare substantial market power of a digital service provider, which would be the natural gate to economic or competition ex ante regulation.

7. The following section of this contribution will describe the main aspects of three recent regulation initiatives that have been put forward in the Mexican Congress.

#### 4. Initiative for the regulation of digital platforms that provide access to audiovisual content

8. Along the first reform to fiscal laws referred above, on September 2019 the Mexican Congress presented an initiative to reform the LFTR to impose the following regulation:

- To consider digital platforms of access to audiovisual content as a Pay TV provided over the internet;
- To require digital platforms of access to audiovisual content to have an authorization issued by the IFT in order to provide services in Mexico;
- To require that at least 30% of the catalogue of digital platforms of access to audiovisual content comes from national production and from enterprises outside their economic interest group;
- To designate the IFT as responsible for the monitoring the compliance of the 30% national content requirement.

9. The proposal of regulation progressed through some instances of legislative review but was finally discarded.

#### 5. Initiative to reform the LFTR in the matter of freedom of speech in social networks

10. As a reaction to the suspension of the Facebook and Twitter accounts of Donald Trump, President of the United States at the time, during the violent events that took place in Washington, D.C., on January the 6<sup>th</sup> 2021, the Mexican President repeatedly stated the need to regulate speech censorship by the digital enterprises since he deem it “a State matter, not a private matter”.

11. On January 2021, a member of Congress put forward an initiative to reform the LFTR to impose the following regulation on “social networks”:

- To introduce a legal definition of “social network service” and of “relevant social network” (those with more than a million subscribers);
- To require the relevant social networks to register and obtain authorization from IFT of their terms and conditions of service, which must include the rules for the elimination of user generated content and for the suspension or cancellation of accounts;
- To require that the rules for the elimination of content or suspension or cancellation of accounts are compatible with freedom of speech and freedom of information rights granted by the Mexican Constitution (limited to cases of dissemination of false information, of content that affects the rights of children, of hate speech and of personal data, in violation of applicable laws);
- To require the provision of a mechanism for subscribers to challenge social networks decisions regarding elimination of content or suspension or cancellation of accounts;
- To forbid the use of algorithms to decide over the cancellation of accounts;
- To order the IFT and the National Electoral Institute (INE, by its acronym in Spanish) to issue specific rules to implement regulation (in the case of the INE,

regarding electoral matters), which must include a mechanism to process complaints from subscribers on the service provided by the social networks.

12. The IFT issued an opinion on the initiative that included certain recommendations to enable a more robust regulation that decreases risks to economic competition through the alternative use of self-regulation or quasi regulation (publicly established rules but without granting coercive powers to authorities) and the minimization of terms, requisites and regulatory costs for the platforms that may act as barriers to competition.

13. The initiative has not progressed to further stages of the legislative process up to this day.

## 6. Initiative to enact the Federal Digital User Law

14. On February 2021, a member of the Mexican Congress put forward an initiative to enact the Federal Digital User Law and to reform the LFTR, the Protection of Personal Data in Possession of Particulars Law, and the Consumer Protection Law.

15. The proposed Federal Digital User Law extensively provided high level principles for strengthening the protection of digital users and also added explicit references to them in the data protection and consumer protection laws. In this initiative, the IFT was responsible for issuing detailed rules for its implementation. Among the high-level regulation proposed we find:

- Portability of personal data and information between digital services;
- Effective prevention and reparation of patrimonial or moral, individual or collective, damages;
- Respect to the intimacy and private sphere of the users;
- Protection against deceptive and abusive publicity, coercive and unfair commercial methods, and abusive or imposed practices and terms in the provision of digital services;
- Real and effective protection of digital users' data.

16. The proposed reform to the LFTR additionally granted to the IFT the power to declare a “preponderant agent” in the “digital sector”. This agent would be any enterprise with a national participation over 50% in terms of users, subscribers, audience or network capacity or traffic. Following the declaration, the IFT would have the attributions to impose it any necessary ex ante regulation to avoid affectations to competition. This “preponderant agent” figure was introduced in Mexican legislation in 2013 in order to regulate T&B sectors that suffered from high economic concentration.

17. The IFT recommended the Congress to avoid as much as possible the use of this figure in the digital sector, where concentration is a more recent phenomenon, because it did not incorporate economic competition criteria for its determination. The IFT also recommended a more thorough review of the provisions of the initiative to ensure its compatibility with the rest of the applicable legal framework and to detail as much as possible the nature and scope of some of the rights or powers vested.